

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH CAROLINA

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CLERK

IN RE:

PROCEEDINGS TO MODIFY STAY,
JUDGE WAITES' CASES ONLY

OPERATING ORDER 98-5

South Carolina Local Bankruptcy Rule (SC LBR) 4001-1 specifies requirements for motions for relief from, or modification of, the automatic stay provided by 11 U. S. C. §362. This order, and Exhibits 1 and 2 hereto (Settlement Order and Certificate of Settlement with Terms (of §362 motion)) specifies additional requirements for such motions, which shall apply to cases assigned to The Honorable John E. Waites only, as set forth below. The provisions of SC LBR 4001-1 which are not modified by this order shall also apply to such motions in Judge Waites' cases.

I - SETTLEMENTS

All settlements shall be effectuated by a Consent Order presented at or before the hearing or by the entry of a form order which adopts either an agreed upon statement of a settlement which is announced at the hearing or a previously filed Certification of Settlement with Terms. **RS-III form orders will no longer be used at Judge Waites' court hearings. Certifications of Settlement pursuant to Local Rule 7016 which do not state the specific terms of settlement will not be accepted prior to the hearing in order to excuse the appearance of the parties.** There are three ways to indicate a settlement of a 362 motion.

- (1) A **Certificate of Settlement with Terms** according to the form attached hereto (Exhibit 1) may be filed prior to the hearing in order to excuse the

appearance of counsel and the parties. The Certificate of Settlement with Terms will be attached to and incorporated into an order issued at or before the hearing. Any Certificate of Settlement with Terms must be presented to the Court at least 24 hours prior to the scheduled hearing. In situations of hardship for out-of-town South Carolina counsel, the Court will consider a telefaxed copy of the Certificate of Settlement with Terms if such is arranged with Chambers prior to the hearing.

(2) If a **Consent Order** and a certificate of no objection by the trustee are in proper form and received by the courtroom deputy prior to the time of the scheduled hearing, the parties are excused from attending the hearing. In order to accommodate settlements which occur immediately before the call of the hearing, Movant's counsel should bring to the hearing a proposed consent order in the form which will likely be agreed upon and one which allows completion or amendment of terms upon agreement with debtor's counsel.

(3) The terms of a settlement may be announced by one or both of the counsel to the motion at the hearing (and the terms reflected in a **Settlement Order** according to the form attached hereto (Exhibit 2) or a **Minute Order** which merely approves the terms as stated on the record.)

Under either of these three procedures, an order resolving the §362 motion will be entered at the hearing by the Court. No consent order which supplements or modifies the terms of settlement will be allowed.

General Matters Regarding Settlements:

Substitute counsel may appear at the hearing for the purpose of presenting a Consent Order or Certification of Settlement with Terms, but may not appear for the purpose of stating the terms of the settlement on the record. In situations of hardship for out-of-town South Carolina counsel, the Court will consider a telephonic appearance for the purpose of stating the terms of settlement if such is arranged with Chambers at least 24 hours prior to the hearing.

Since §362 motions in Chapter 11 cases are noticed to various creditors, Movant's or the debtor's counsel must appear at

the hearing to announce any settlement with the Debtor in Possession and address inquiries by other appearing creditors.

Neither settlement orders nor default orders should contain provisions which attempt to make the order binding upon a trustee or creditors in the event of the conversion of the case to another chapter or provisions which purport to limit the effect of the automatic stay upon the dismissal and refiling of the case. Such provisions require a showing of cause before the Court after an actual hearing.

II - DEFAULTS

Movant's counsel should prosecute defaults in a timely fashion before the hearing in order to remove them from the calendar. All default certificates and proposed orders shall be presented to the courtroom deputy at least 24 hours prior to the hearing except when the last day for objection is on or after that time. It is the Movant's responsibility to advise the courtroom deputy when a default order will be presented. In any other instance of default, the Movant's counsel should advise the courtroom deputy no later than 24 hours prior to the hearing that the matter is in default and the default certificate and proposed order should be presented to the courtroom deputy by Movant's counsel immediately before the start of the docket call for court that day. The courtroom deputy shall, at the beginning of the docket, call present all orders of default to the judge for consideration. Those default orders will be announced and signed at the beginning of the session of the court and Movant's counsel will be excused at that time.

General Matters Regarding Defaults:

Defaults Under Previous Drop-Dead Orders: All proposed orders for relief which are submitted as a result of a default under a previously entered settlement order (drop-dead order) shall state the specific reason for the default; i.e. "the debtor failed to make the payments due for July and August according to the deadline established in the order of (date)".

Neither settlement orders nor default orders should contain provisions

which attempt to make the order binding upon a trustee or creditors in the event of the conversion of the case to another chapter or provisions which purport to limit the effect of the automatic stay upon the dismissal and refiling of the case. Such provisions require a showing of cause before the Court after an actual hearing.

III - CONTINUANCES

Absent extraordinary circumstances, all requests for continuance of a §362 hearing shall be received in a writing from the Movant and directed to chambers at least 24 hours prior to the hearing. When cause exists, a telefax request may be submitted to Chambers. **Such writing must indicate good cause for the continuance, that all parties who have had notice and who have timely responded to the motion agree to the continuance, and that the Movant waives the automatic lifting of the stay.** If granted, the courtroom deputy shall advise the Movant's counsel by telephone or telefax and will give the date and time of the continued hearing. That party shall be responsible for advising all other interested parties who may appear at the hearing. However, it is ultimately the parties' responsibility to determine the date, time and location of the continued hearing inasmuch as no written notice shall be provided by the Court. No more than one continuance or a continuance of more than 30 days shall be granted absent a finding of sufficient cause after a hearing at which all parties have appeared. Most continuances which are granted shall be for a period of approximately 2 weeks. In obtaining the continuance, the parties shall be deemed to have no scheduling conflicts for the continued date, that the continued hearing may be set for any court location in the District of South Carolina, and that the continued hearing may be set before a different judge of the court if so designated. No continuance shall be given unless these procedures are specifically followed except in circumstances of manifest injustice.

IV - WITHDRAWALS

A withdrawal of a §362 motion must be stated in writing and received by Chambers at least 24 hours prior to the hearing. When cause exists, a telefax

request may be submitted to Chambers. **Such writing must indicate the reason for the withdrawal, that the party opposing the §362 motion, if any, does not oppose the withdrawal, that all parties who have had notice of, and who have timely responded to, the motion have been notified of the withdrawal and are not opposed to it, and that no party is expected to appear at the hearing before the Court.** Any request which does not comply with these requirements shall be denied, and the parties shall be expected to appear at the hearing for the Court to consider any request for withdrawal.

V - OTHER RELIEF FROM STAY (RS) FORM ORDERS

RSI, RSII, RSIV, RSV, RSVI and RSVII form orders shall still be available for use in Judge Waites' court.

The provisions of this operating order are effective as of October 1, 1998.

AND IT IS SO ORDERED.


JOHN E. WAITES, JUDGE

Columbia, South Carolina

September 28, 1998

EXHIBIT 1 TO OPERATING ORDER 98-5

CERTIFICATE OF SETTLEMENT OF §362 MOTION

CASE NUMBER: _____

CHAPTER: _____

HEARING DATE: _____

TERMS: (Set forth the terms with specificity or attach a proposed order) _____

I certify that the terms stated above are those agreed to by the parties.

(Date) _____

Attorney for: _____

EXHIBIT 2 TO OPERATING ORDER 98-5

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE: _____)
)
) CASE NO: _____
)
) CHAPTER _____
)
 Debtor(s) _____)
 _____)

SETTLEMENT ORDER

This matter comes before the Court pursuant to the motion of _____
____ which seeks relief from the Automatic Stay in this case. A hearing was held on _____

at which one or more counsel of the parties who are not in default announced the terms of
settlement of the motion and advised the Court that the Trustee had filed no objection to the
motion.

Now therefore, upon the agreement of the parties, it is hereby

ORDERED THAT:

(1) Debtor(s) shall continue to remit to the Movant the regular post-petition
monthly payments beginning _____ (Date) and continue said payments
thereafter pursuant to the Loan Documents attached to the Motion for Relief from Stay.

(2) In addition to the payments set forth above, Debtor(s) shall cure post-
petition arrearage and pay attorney's fees and costs in the total amount of \$ _____. This

total amount consists of post-petition payments for the months of _____ (Date)
through _____ (Date) in the amount of \$_____ each; late charges of \$_____;
and attorney's fees and costs in the amount of \$_____. The total amount shall be paid
directly to Movant at:

_____ (Movant's name)
_____ (Movant's address)
Attention: Bankruptcy Department
Loan No. _____

as follows:

in _____ consecutive monthly installments of \$_____ each and one final installment of
\$_____. Said installment payments shall commence on _____ and
continue on the _____ (due date) day of each consecutive month thereafter until paid in
full.

IT IS FURTHER ORDERED that should the Debtor(s) fail to make the payments
described above or any subsequent regular payments within _____ from their due
date, upon an ex parte showing by affidavit of that default and a proposed order, Movant shall be
entitled to relief from the stay [and Co-Debtor(s) stay] so that it can proceed with its state court
remedies against its security, including making demand for payment of the amount due. Movant
shall report to this Court any funds received as a result of a lawful disposition of the real property
in excess of its total indebtedness plus any other valid lien against the subject property. The
claimant agrees to waive any claim arising under 11 U.S.C. §503(b) or §507(b) as a result of this
Order. The Movant further agrees that any funds realized in excess of its debt will be paid to the
trustee.

AND IT IS SO ORDERED.

UNITED STATES BANKRUPTCY JUDGE

_____, South Carolina

_____, 199 _____

Option #1

CONSENT SIGNATURES APPEAR ON THE FOLLOWING PAGE

I SO MOVE:

Attorney for Movant
Address:

(Date) _____

District ID # _____

I SO CONSENT:

Attorney for the Debtor
Address:

(Date) _____

District ID # _____

Option #2

I certify that this order contains a true and complete statement of the agreed upon terms of settlement between the parties.

Attorney for Movant/Debtor/Trustee

(Date) _____